

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Mills	Team: Team # 3	CCRB Case #: 201205671	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 04/27/2012 10:20 PM	Location of Incident: § 87(2)(b) and the PSA 4 Stationhouse		Precinct: 07	18 Mo. SOL 10/27/2013	EO SOL 10/27/2013
Date/Time CV Reported Sat, 04/28/2012 5:16 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/03/2012 1:12 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Mariusz Jasiurkowski	20843	941949	PSA 4
2. SGT Eric Dym	00577	933762	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Marco Gavilanes	14243	928361	PSA 4
2. POM Thomas Dunne	20950	936530	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Mariusz Jasiurkowski	Abuse: PO Mariusz Jasiurkowski stopped § 87(2)(b)	§ 87(2)(b)
B.POM Mariusz Jasiurkowski	Force: PO Mariusz Jasiurkowski used physical force against § 87(2)(b)	§ 87(2)(b)
C.SGT Eric Dym	Abuse: Sgt. Eric Dym strip-searched § 87(2)(b)	§ 87(2)(b)

## Case Summary

On April 28, 2012, Sgt. Alfred Reed of PSA 4 filed this complaint by phone with IAB after § 87(2)(b) complained that he had been punched in the face during his arrest. The CCRB received this complaint on May 3, 2012.

At approximately 10:20 p.m. on April 27, 2012, in the vicinity of § 87(2)(b) in Manhattan, officers arrested § 87(2)(b). The following allegations resulted from this incident:

- **Allegation A – Abuse of Authority: PO Mariusz Jasiurkowski stopped** § 87(2)(b)
- **Allegation B – Force: PO Mariusz Jasiurkowski used physical force against** § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

- **Allegation C – Abuse of Authority: Sgt. Eric Dym strip-searched** § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

This case was closed on July 18, 2012, and then reopened on January 7, 2013, following § 87(2)(b)'s written request. The investigation was initially assigned to Investigator Diana Murray, but was reassigned on February 1, 2013, to Investigator Mills, following Investigator Murray's reassignment to a different investigative team.

## Results of Investigation

### Civilian Statements

#### **Complainant/Victim:** § 87(2)(b)

- § 87(2)(b)

#### **Statements to Medical Personnel**

At 2:29 a.m. on April 28, 2012, § 87(2)(b) arrived at § 87(2)(b) Hospital Center, complaining that was punched in face during an altercation with authority, and that a bottom tooth was loose (encl. 31a-31i).

#### **Arrest Photograph** (encl. 19)

The arrest photograph does not appear to show any sign of visible injuries.

#### **CCRB Statement**

§ 87(2)(b) made his initial complaint on April 28, 2013, in person at the precinct stationhouse, following his arrest (encl. 13). On May 21, 2012, he provided a telephone statement (encl. 14), and on February 4, 2013, he provided an official statement at the CCRB (encl. 15a-15c). The § 87(2)(g)

At approximately 10:20 p.m. on April 27, 2012, in the vicinity of § 87(2)(b) in Manhattan, § 87(2)(b) ate pizza at a corner store with § 87(2)(b) and two unidentified men he did not know. The four men then walked together to § 87(2)(b) where § 87(2)(b) and § 87(2)(b) stood and waited in the lobby for two women they were seeing, whom § 87(2)(b) later identified

as § 87(2)(b) and § 87(2)(b). The other two men waited with them, talking. There were no “no loitering” signs in the lobby, though some were put up after his arrest. § 87(2)(b) was wearing blue jeans and possibly a jacket, though he could not recall exactly what he was wearing.

After a few minutes, the two men suddenly ran out of the back of the building. § 87(2)(b) turned to see what they were running from and saw two men in plainclothes, later identified as PO Mariusz Jasiurkowski and PO Marco Gavilanes of Police Service Area 4, running in through the door.

§ 87(2)(b) described PO Jasiurkowski as a slightly taller than 5’9”, muscular, approximately 180 to 185 pound Hispanic man, who was approximately 37 or 38 years old. He described PO Gavilanes as an approximately 5’6” tall, stocky but averagely built Hispanic man who was slightly older than PO Jasiurkowski. The officers did not make any statements or issue any commands identifying themselves as police officers, so § 87(2)(b) attempted to run out the door. As he did so, he pushed past PO Jasiurkowski, who was still in the doorway, pushing PO Jasiurkowski’s hands away. PO Gavilanes ran after the other men.

In his initial complaint and phone statement, § 87(2)(b) initially alleged that PO Jasiurkowski punched him. However, in his CCRB statement, § 87(2)(b) alleged that PO Jasiurkowski swung his right arm at him, in an overhand motion, as though PO Jasiurkowski was attempting to grab § 87(2)(b) and § 87(2)(b) threw his hands in the air to block PO Jasiurkowski’s hand. They both missed, and PO Jasiurkowski’s palm struck § 87(2)(b)’s lower teeth, loosening one of them. § 87(2)(b) continued to run, and PO Jasiurkowski chased him, pushing him and then pulling out a shield. § 87(2)(b) realized that PO Jasiurkowski was an officer and stopped running.

PO Jasiurkowski then handcuffed § 87(2)(b) to a fence, and they began to argue about whether § 87(2)(b) was trespassing or had said “shoot them.” PO Jasiurkowski called for backup, and approximately 10 to 15 cars arrived. § 87(2)(b) was then transported to the PSA 9 stationhouse, where he was searched and a wallet and Bible were removed from his pockets. The desk sergeant, identified via investigation as Sgt. David Fargnoli, asked if he needed medical attention, and § 87(2)(b) said that he did. § 87(2)(b) was then placed in a cell with three or four other males for approximately 15 minutes, when an officer, later identified by the investigation as Sgt. Eric Dym, took him out of the cell and asked him for names of individuals who possessed guns, telling § 87(2)(b) that if he cooperated, he would be cut slack, but if he did not cooperate, he would not get medical treatment.

Sgt. Dym then spoke briefly with another officer, returned, and took § 87(2)(b) to a bathroom, where he made § 87(2)(b) remove his clothing and bend over. Following the strip search, Sgt. Dym told § 87(2)(b) that he would not have been strip searched if he had helped Sgt. Dym out. § 87(2)(b) was allowed to put his clothes back on, and was taken back to the cell. While he was there, he repeatedly requested medical attention from various officers, and an ambulance was called for him. He was eventually released, and was found not guilty of trespassing when § 87(2)(b) brought identification showing that he lived in the building. § 87(2)(b) never fidgeted or reached towards his waistband during the incident, and never made comments about shooting anyone.

**Witness:** § 87(2)(b)

- § 87(2)(b)

**CCRB Statement**

§ 87(2)(b) provided a statement to the CCRB on March 8, 2013 (encl. 20a-20b). The following is a summary of his statements.

At approximately 10:20 p.m. on April 27, 2012, § 87(2)(b) was waiting in the lobby of § 87(2)(b) in Manhattan with § 87(2)(b) because they were both seeing women there. § 87(2)(b) was seeing a woman named § 87(2)(b) and, § 87(2)(b) was seeing her daughter, § 87(2)(b). § 87(2)(b) did not know how to spell their names. They had come from either a nearby store or from § 87(2)(b)’s apartment, with two other men whom neither knew personally. § 87(2)(b) heard someone running in through the door, and the two men suddenly ran up some stairs. He turned and saw two

officers, PO Gavilanes and PO Jasiurkowski, running towards them. PO Gavilanes approached him, but § 87(2)(b) and PO Gavilanes turned to look at § 87(2)(b) and PO Jasiurkowski, because they were fighting. § 87(2)(b) explained that by fighting, he meant that PO Jasiurkowski shoved § 87(2)(b) against a wall, and then swung his arms in a punching motion two or three times.

§ 87(2)(b) heard § 87(2)(b) scream, "Oh, my mouth" and assumed that § 87(2)(b) had been hit in the mouth, though he did not see this occur. § 87(2)(b) fell away from PO Jasiurkowski, sucking on his lip. PO Gavilanes then ran over and began to help PO Jasiurkowski to overpower § 87(2)(b). § 87(2)(b) put his hands up in front of himself, palms outward. The officers then pulled § 87(2)(b) out of the building by his sweater and handcuffed him to a gate. After that, the officers identified themselves as officers, and told § 87(2)(b) that he was being arrested for trespass. § 87(2)(b)'s hands were eventually cuffed behind his back, and approximately ten seconds later, backup units arrived. The woman § 87(2)(b) had come to see told the officers that § 87(2)(b) was there to see her, and was not trespassing.

§ 87(2)(b) was placed in one of the vehicles. None of the civilians involved in the incident made any comments about weapons or contraband, and none reached towards their waistbands. § 87(2)(b) was not arrested and was not issued any summonses.

### **NYPD Statements:**

#### **Subject Officer: PO MARIUSZ JASIURKOWSKI**

- § 87(2)(b)
- *PO Jasiurkowski worked from 6 p.m. on April 27, 2012 to 2:35 a.m. on April 28, 2012. He was assigned to the Anti-Crime team with his partner, PO Marco Gavilanes. They were in plainclothes in an unmarked RMP.*

#### **Memo Book Entries**

- PO Jasiurkowski's memo book entries indicate that at 10:20 p.m. a group of men were observed loitering in the lobby of § 87(2)(b). Three men moved towards a staircase and another man stated "yo, shoot those motherfuckers. Shoot those motherfuckers" then fled towards the front door. He stopped in front of § 87(2)(b) but refused to comply with orders, waving his arms in an aggressive manner in an attempt to evade arrest, which caused a crowd to gather. At 11:00 p.m. § 87(2)(b) was arrested and charged with Obstruction of Governmental Administration, Resisting Arrest, and Criminal Trespass. At 11:05 p.m. PO Jasiurkowski arrived at the PSA4 stationhouse, and at 11:40 p.m. conducted a strip search. Sgt. Dym and PO Dun were present. Nothing was recovered during the strip search, and at 1:00 a.m. the next day, § 87(2)(b) requested Emergency Medical Services because of pain to the right side of his face. At 2:00 a.m. § 87(2)(b) was removed to § 87(2)(b) Hospital. (encl. 22a-22c)

#### **Criminal Complaint Report** (encl. 33a-33b)

The criminal complaint report generated by PO Jasiurkowski for this arrest indicates that § 87(2)(b) was observed in a NYCHA building without any legitimate purpose, despite several "no trespassing" signs posted there. When § 87(2)(b) saw the officers, he approached a group of known robbery recidivists and stated, "yo, shoot those motherfuckers" multiple times before running away. § 87(2)(b) pushed PO Jasiurkowski's arms away, attempting to evade arrest, and refused to comply with PO Jasiurkowski's orders, causing a crowd to gather. A strip search was conducted, but no contraband was obtained during the search.

#### **Arrest Report** (encl. 36b)

§ 87(2)(b) was arrested and charged with criminal trespass in the second degree, obstruction of governmental administration in the second degree, and resisting arrest, after he was observed remaining unlawfully in a NYCHA building without a legitimate purpose.

#### **Handwritten Stop, Question, and Frisk Report** (encl. 25)

The handwritten Stop, Question, and Frisk report for this incident indicates that § 87(2)(b) identified from a photo ID, was stopped, frisked, searched, and arrested, and that officers used physical force to defend themselves. The circumstances leading to the stop were: actions indicative of casing a victim or location, furtive movements, actions indicative of engaging in violent crimes, and the statement, “yo, shoot those motherfuckers.” Additional factors were: that the area had a high incidence of a reported offense, that § 87(2)(b) was associating with individuals known for their criminal activity, § 87(2)(b)'s proximity to the scene of a suspected offense, sights and sounds of criminal activity, and that § 87(2)(b) changed directions at the sight of an officer. The frisk was based on verbal threats by § 87(2)(b) refusal to comply with officers' directives, officers' suspicions that § 87(2)(b) was involved in violent crime, and furtive movements made by § 87(2)(b).

#### **Criminal Court Complaint** (encl. 40b-40c)

PO Jasiurkowski filed the Criminal Court Complaint for this incident on April 28, 2012. PO Jasiurkowski's statements in the Criminal Court Complaint were consistent with his CCRB statement, which is summarized below.

#### **CCRB Statement**

PO Jasiurkowski provided a statement at the CCRB on March 26, 2013 (encl. 23a-23c). The following is a summary of his statements.

At approximately 10:20 p.m. on April 27, 2012, PO Jasiurkowski and PO Marco Gavilanes were patrolling the vicinity of the § 87(2)(b), a NYCHA building located at § 87(2)(b) in Manhattan. When they drove by the lobby, approximately 50 feet from the door, they could see through the half-glass doors into the well-lit lobby, where approximately four men appeared to be loitering. Approximately ten or 15 minutes later, they drove by again, observing the same men in the lobby. Though PO Jasiurkowski did not know any of the men, he recognized them as robbery recidivists, and since they appeared to be loitering in the lobby of a NYCHA building in a trespass program, the officers decided to investigate. They parked their vehicle and walked into the building behind another person, displaying their shields, without making any statements.

Two or three of the men saw the officers and ran towards a staircase. Another man, later identified from his arrest documentation as § 87(2)(b) stated “Yo, shoot these motherfuckers.” PO Gavilanes ran after the other men, and PO Jasiurkowski turned towards § 87(2)(b) who immediately ran towards the door. PO Jasiurkowski ran after him, catching up with him outside the building and saying that he was police officer. § 87(2)(b) stopped running, and PO Jasiurkowski stated that he was going to check for weapons, reaching for § 87(2)(b)'s hands and jacket in order to restrain him and check for weapons. § 87(2)(b) asked why he was being restrained and pushed PO Jasiurkowski's hands away.

PO Jasiurkowski ordered § 87(2)(b) to put his hands behind his back, but § 87(2)(b) pushed PO Jasiurkowski's hands away and shoved PO Jasiurkowski's chest with his open palms. PO Jasiurkowski attempted to handcuff § 87(2)(b) by shoving his hands behind his back, beginning a minute long fight during which they were shoving each other. PO Jasiurkowski then punched § 87(2)(b)'s left cheek with his right hand, which disoriented § 87(2)(b) enough that PO Jasiurkowski was able to handcuff one of § 87(2)(b)'s hands. PO Jasiurkowski only hit § 87(2)(b) once, and did not make contact with § 87(2)(b)'s mouth.

PO Jasiurkowski then handcuffed § 87(2)(b) to a fence, since § 87(2)(b) was keeping his arms stiff, preventing them from being handcuffed behind his back. A crowd gathered, and PO Gavilanes was still in the building. PO Jasiurkowski stepped back from § 87(2)(b) and called for backup. He

waited approximately a minute, without speaking to § 87(2)(b). Approximately six officers arrived and helped to handcuff § 87(2)(b)'s hands behind his back, at which point he became compliant. § 87(2)(b) was placed in the back of an RMP and driven to the stationhouse. PO Jasiurkowski sat next to § 87(2)(b) in the back of the RMP, where he observed § 87(2)(b) fidgeting with his hands behind his back near his waistband. PO Jasiurkowski could not tell whether § 87(2)(b)'s hands were in his pants, and told § 87(2)(b) to stop fidgeting. § 87(2)(b) continued to fidget. PO Jasiurkowski was uncertain which other officers were in the RMP with them.

At the stationhouse, PO Jasiurkowski told his supervisor, Sgt. Eric Dym, about the incident, adding that § 87(2)(b) had been fidgeting in the backseat. Sgt. Dym, PO Jasiurkowski, and PO Dun took § 87(2)(b) to a private cell and told him to strip. § 87(2)(b) complied. The strip search occurred approximately 35 minutes after they arrived at the precinct stationhouse. The strip search occurred immediately after § 87(2)(b) was placed in the cell, and § 87(2)(b) did not interact with any other officers beforehand. Nothing was recovered during the search. PO Jasiurkowski did not recall speaking with § 87(2)(b) after the search, except when § 87(2)(b) asked what his charges were and requested medical attention for his face. § 87(2)(b) was taken to § 87(2)(b) Hospital Center at 2 a.m. which was twenty minutes after the strip search.

#### **Subject Officer: SGT. ERIC DYM**

- § 87(2)(b)
- *Sgt. Dym was the PSA4 anti-crime team supervisor. He worked from 6 p.m. on April 27, 2012, to 2:44 a.m. on April 28, 2012.*

#### **Memo Book Entries**

- Sgt. Dym's memo book indicates that at 10:40 p.m. on April 28, 2013, he arrived at § 87(2)(b). At 11 p.m. a person was arrested in front of the building and at 11:05 he arrived back at the PSA4 stationhouse. At 11:10, he conducted a strip search of § 87(2)(b) yielding negative results. (encl. 28a-28c)

#### **CCRB Statement**

Sgt. Dym provided an official statement at the CCRB on June 13, 2013. (encl. 29a-29c) The following is a summary of his statements.

PO Mariusz Jasiurkowski called for assistance at § 87(2)(b) and Sgt. Dym responded to the location. When he arrived, he observed that, an individual, identified by PO Jasiurkowski as § 87(2)(b) was in custody. § 87(2)(b) was squirming with his hands behind his back, "almost as though he had itchy butt syndrome." Sgt. Dym observed § 87(2)(b) from the back and the front. Though he did not recall exactly what § 87(2)(b) was doing with his hands, from his training and experience as an anti-crime supervisor, Sgt. Dym thought that § 87(2)(b)'s movements were indicative of attempting to secret an item in his body without using his hands to do so. Sgt. Dym had observed people making similar squirming movements in the past in order to secret items in their bodies without using their hands. When asked again what § 87(2)(b) was doing with his hands, Sgt. Dym's union representative, Sgt. Patrick Logan, interrupted and stated that Sgt. Dym could not recall exactly what § 87(2)(b) was doing with his hands, since the incident had occurred over a year ago, but that Sgt. Dym had already confirmed that § 87(2)(b) was squirming. Sgt. Dym could not recall what § 87(2)(b) was saying, but recalled that § 87(2)(b) was very loud and combative.

PO Jasiurkowski told Sgt. Dym that the officers had observed § 87(2)(b) along with approximately three other unidentified men, enter the lobby of § 87(2)(b) together. PO Jasiurkowski told Sgt. Dym that he was familiar with everyone who lived in the building, and was also familiar with § 87(2)(b) and the other men in the group. He told Sgt. Dym that none of the group lived in the building, and that they were all known robbery index crime recidivists, though they did not officially belong to any gangs. Because of this, PO Jasiurkowski and PO Gavilanes approached the group.

However, § 87(2)(b) intervened in order to prevent the officers from stopping the other men. § 87(2)(b) did so, and managed to separate PO Jasiurkowski and his partner, by screaming, "Shoot those motherfuckers, shoot the cops," and then fighting PO Jasiurkowski outside the building, when PO Jasiurkowski tried to stop him, while the other men ran away. Sgt. Dym added that, though he could not recall, he thought that one of the men in § 87(2)(b)'s group had locked the door, separating the officers. By preventing the officers from stopping the other men, § 87(2)(b) put the officers and the other residents of the building in danger. PO Jasiurkowski could not get § 87(2)(b) in cuffs, so he handcuffed one of § 87(2)(b)'s wrists to a fence.

Sgt. Dym also recognized § 87(2)(b) who had been involved in a shooting at the same location, was involved in narcotics related crime in the area, was a robbery and index crime recidivist, and was known to have a violent history. During the interview, Sgt. Dym stated that he noticed on his interview sheet that § 87(2)(b) was listed as a witness. Sgt. Dym said that though he had not seen § 87(2)(b) and had not known that § 87(2)(b) was there, he had also arrested § 87(2)(b) on different occasions, and knew that § 87(2)(b) was another index crime recidivist. Though Sgt. Dym could not recall exactly what § 87(2)(b) was wearing, he recalled that § 87(2)(b) was wearing multiple pairs of pants at the same time, despite the relatively warm weather, which he said was a common practice among that group of crime recidivists, who were known for concealing contraband on their persons.

Sgt. Dym went back to the stationhouse approximately five minutes later. Other officers transported § 87(2)(b) to the stationhouse as well, though Sgt. Dym did not recall which officers had done so. At the stationhouse, PO Jasiurkowski took down § 87(2)(b)'s pedigree information, and a frisk was conducted pursuant to the arrest. Sgt. Dym did not perform the frisk, and could not recall what officer had done so. Sgt. Dym did not recall whether any items were vouchered, and did not recall any conversation taking place between himself and § 87(2)(b) or PO Jasiurkowski and § 87(2)(b). While § 87(2)(b) was in the stationhouse, he stood directly in front of Sgt. Dym, facing him. His shoulders and the visible parts of his arms were moving in such a way that made it clear to Sgt. Dym that § 87(2)(b) was moving his hands around in the vicinity of his buttocks, fidgeting and squirming around the same way that he had in front of § 87(2)(b). Sgt. Dym could not see § 87(2)(b)'s hands, however, and could not tell whether § 87(2)(b)'s hands were inside of or outside of his pants, since § 87(2)(b) was wearing multiple pairs of pants and was facing towards him. However, § 87(2)(b)'s movements were so indicative of secreting an object, that Sgt. Dym believed that § 87(2)(b) was hiding something. PO Jasiurkowski told Sgt. Dym that § 87(2)(b) had also been fidgeting and reaching around his waistband area during transport to the stationhouse, as though he had something in his pants. Sgt. Dym did not recall whether any statements were made to § 87(2)(b) regarding the fidgeting.

After discussing § 87(2)(b)'s behavior with PO Jasiurkowski, Sgt. Dym decided to conduct a strip search of § 87(2)(b). He made this decision because he knew from PO Jasiurkowski and from his own personal experience, that § 87(2)(b) was a known robbery and narcotics recidivist, who had been involved in a shooting and had been arrested, in a high crime area, after making statements about shooting PO Jasiurkowski, who was wearing multiple pairs of pants, who had been known to conceal weapons in his clothing, and who had appeared to be reaching around in his pants or near his buttocks at the location of the incident, in the police vehicle during transport to the precinct stationhouse, and at the precinct stationhouse. Sgt. Dym stated that, according to the patrol guide procedure, the immediate supervisor of the arresting officer is responsible for authorizing strip searches. PO Jasiurkowski and Sgt. Dym conducted the strip search at approximately 11:10 p.m. in a private cell that was not visible to anyone else. Sgt. Dym did not recall whether PO Dun was there as well. Nothing was recovered during the strip search.

Sgt. Dym did not recall § 87(2)(b) having any injuries, did not recall § 87(2)(b) mentioning any injuries, and did not recall § 87(2)(b) being given medical treatment. He did not recall any other officers interacting with § 87(2)(b). He did not tell § 87(2)(b) that he was strip-searched because § 87(2)(b) was uncooperative, and never heard any other officer make that statement. Sgt.

Dym added that the NYPD does not coerce perpetrators through strip searches. Following the strip search, Sgt. Dym worked on processing arrest paperwork.

**Witness Officer: MARCO GAVILANES**

- § 87(2)(b)
- *PO Gavilanes worked from 6 p.m. on April 27, 2012, to 2:25 a.m. the next day. He was in plainclothes and was assigned to a precinct anti-crime team.*

**Memo Book Entries**

- PO Gavilanes' memo book indicates that he was conducting a vertical patrol in § 87(2)(b) with his partner, PO Jasiurkowski, when they stopped three men in the lobby. Subsequently, they were arrested by PO Jasiurkowski. At 11:00 p.m. they were transported by patrol. At 11:05, PO Gavilanes conducted administrative work at the stationhouse, which he thought probably involved helping PO Jasiurkowski with arrest documentation. (encl. 26a-26b)

**Officer Statement**

PO Marco Gavilanes provided a statement at the CCRB on May 23, 2013 (encl. 27a-27b). The following is a summary of his statement.

PO Marco Gavilanes did not identify himself as an officer when he entered the lobby of § 87(2)(b) since he was entering it to observe the individuals in the building but did not intend to arrest them at that time. He did not recall PO Jasiurkowski doing so. He heard someone shouting, and initially stated that he did not recall what the person was shouting, though after being asked whether anyone had said, "yo, shoot those motherfuckers," he stated that he vaguely recalled that exact phrase being shouted. § 87(2)(b) ran out of the front door when he saw the officers, and PO Jasiurkowski ran after him. Other people ran in other directions. PO Gavilanes did not feel like running, so he remained in the lobby and told other people who had remained in the lobby that as long as they were in the building legally, they would not be in trouble.

PO Gavilanes remained in the lobby for approximately five minutes, during which time he was not aware what PO Jasiurkowski was doing. He called for backup, and then wrote the names and addresses of the other people in the lobby on a scrap of paper, in order to help PO Jasiurkowski with § 87(2)(b)'s arrest paperwork if § 87(2)(b) was arrested. He did not use his memo book because the people had not been arrested. He did not recall whether those people lived in the building.

When PO Gavilanes left the building, he saw that additional units had arrived and that § 87(2)(b) had been handcuffed and was being transported back to the stationhouse. PO Gavilanes went back to the stationhouse in a different vehicle and helped PO Jasiurkowski to process § 87(2)(b)'s arrest. PO Gavilanes did not recall anything else about the incident. He did not recall any reason for a strip search, did not recall a strip search being conducted, and did not recall a strip search being discussed. He did not recall asking § 87(2)(b) any questions about weapons or contraband.

**Officers not Interviewed**

Sgt. Dym and PO Jasiurkowski both stated that PO Dunne was present during the strip search. However, PO Dunne was not interviewed, since he was not a subject or witness in any of the other allegations, and since the allegation concerning the strip search was not related to officers' conduct during the strip search, but to the incidents leading up to the strip search, for which PO Dunne was not present.

**Medical Records** (encl. 31a-31i)

Swelling was initially noted on the right side of his face, at 2:41 a.m. but at 3:55 a.m. no signs of trauma were noted on his face. An anterior, lower incisor was slightly loose in its socket. § 87(2)(b) was given Tylenol and discharged at 3:59 a.m. He had consumed alcohol that night but was not on



medication. § 87(2)(b) s prior medical history included gunshot wounds to his neck and back. His last hospital visit had been in November of 2008.

### **NYPD Documents**

#### **SPRINT** (encl. 37)

SPRINT Report #§ 87(2)(b) which was generated during this incident, indicated that officers responded to § 87(2)(b) two criminal complaint reports were prepared, and officers left.

#### **Roll Call** (encl. 39a-39d)

On April 27, 2013, PO Gavilanes and PO Jasiurkowski both worked during Tour 3 on anti-crime team number one. Sgt. Dym worked as the supervisor for anticrime team number one.

#### **Property Vouchers** (encl. 38b-38c)

The following objects were vouchered by PO Jasiurkowski on April 28, 2012: two cell phones, a cell phone battery, a set of keys, three multicolored rocks, 4 teeth, a comb, a bandana, two shoelaces, a jacket, a hoody, and a belt.

### **Other Evidence**

#### **Street-View Photograph**

A GoogleMaps Street-View photograph of the incident location indicates that the lobby of § 87(2)(b) is visible from the street (encl. 7).

#### **Arrest for Incident and Disposition**

Certificate of Disposition number 297819 indicates that all criminal charges in connection with this incident have been dismissed (encl. 40a).

### **Status of Civil Proceedings**

§ 87(2)(b) has not filed a Notice of Claim with the City of New York as of April 1, 2013, which is nine months past the 90-day filing deadline, with regard to the incident (encl. 43).

§ 87(2)(b)

§ 87(2)(b)

### **Subject Officers' CCRB Histories**

- PO Mariusz Jasiurkowski has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. 9).
- Sgt. Eric Dym has been a member of the service for nine years and there is one substantiated CCRB allegation against him, resulting from CCRB case number 201114190. Sgt. Dym received a command discipline for abuse of authority resulting from a stop (encl. 10).

### **Conclusion**

### **Identification of Subject Officers**

§ 87(2)(b) identified the officer who stopped and used force against him as a 5'9" or taller, 180 to 185 pound, Hispanic man in his late 30s. § 87(2)(b) identified that officer as a tall, big, blonde, white man. § 87(2)(b)

§ 87(2)(b), § 87(2)(g), PO Jasiurkowski admitted to stopping and using force against § 87(2)(b) PO Jasiurkowski also filed the criminal complaint report and stop, question, and frisk report for § 87(2)(b) and was identified as the subject of those allegations by his partner and supervisor. § 87(2)(b) identified the officer who had strip searched him as a 6'1", muscular, 40 to 42 year old blond white man with brown eyes. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), Sgt. Dym admitted to ordering and being present for the strip search.

### **Investigative Findings and Recommendations**

#### **Allegation A – Abuse of Authority: PO Mariusz Jasiurkowski stopped § 87(2)(b)**

It is undisputed that § 87(2)(b) was waiting in the lobby of a NYCHA building at which he did not reside, along with other men, and that upon seeing officers enter the building, the men scattered, and that § 87(2)(b) ran towards the entrance through which the officers had just come. It is also undisputed that PO Jasiurkowski then stopped § 87(2)(b) § 87(2)(b), § 87(2)(g)

PO Jasiurkowski alleged that he approached the group, which he thought to be comprised of crime recidivists, after observing them in the lobby of the building for approximately 15 minutes, causing him to suspect that they were trespassing, and that § 87(2)(b) stated, "shoot those motherfuckers," upon seeing the officers. § 87(2)(b) also stated that he did not know why he ran, and that he did not know the other men who ran. Sgt. Dym stated that PO Jasiurkowski had told him the same account immediately following the incident. PO Gavilanes confirmed the reasons for the initial approach, but did not recall hearing the statement, "shoot those motherfuckers," until he was asked about it during his interview, at which point he stated that he vaguely recalled the phrase being used verbatim. PO Jasiurkowski's statements were corroborated by the memo book entries, handwritten Stop, Question, and Frisk report, Arrest Report, and Criminal Complaint Report that he generated for this incident. § 87(2)(g)

Flight from police is not justification for police pursuit absent other indications of criminality. People v. Holmes, 81 N.Y.2d 1056 (1993) (encl. 5a-5d). Police officers may approach and question a person based on common law right of inquiry, in order to request information, such as a person's address. An officer may also stop a person if the officer has reasonable suspicion that the person has committed, is committing, or is about to commit a crime or misdemeanor. People v. De Bour, 40 N.Y.2d 210 (1976) (encl. 4a-4g) Patrol Guide series 208, pursuant to the New York City Housing Authority Trespass Notice Program, states that when a person who has been previously convicted of felony sale of a controlled substance commits a trespass offense on NYCHA property, that person will be arrested and charged with a trespass offense (encl. 2a-2h). Section 140.10 of the New York State Penal Law Index states that a person has committed criminal trespass in the third degree when he knowingly enters or remains unlawfully in a public housing project building, in violation of conspicuously posted rules or regulations governing entry and use of that building (encl. 6c-6d).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation B – Force: PO Mariusz Jasiurkowski used physical force against § 87(2)(b)**

It is undisputed that PO Jasiurkowski used force to stop § 87(2)(b) when § 87(2)(b) resisted arrest, and that § 87(2)(b) was then handcuffed to a fence. § 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 203-11 states that only that amount of force necessary to overcome resistance will be used to effect an arrest (encl. 6a-6b).

§ 87(2)(b), § 87(2)(g)

**Allegation C – Abuse of Authority: Sgt. Eric Dym strip-searched § 87(2)(b)**

It is undisputed that Sgt. Dym and PO Jasiurkowski strip-searched § 87(2)(b) in a private location at the PSA4 stationhouse, § 87(2)(g). § 87(2)(b) contended that he had not made the statement, “yo, shoot those motherfuckers,” had not been fidgeting, and that an officer, later determined by the investigation to be Sgt. Dym, had strip-searched him in retaliation for his refusal to provide information. PO Jasiurkowski and Sgt. Dym both stated that they had observed and discussed with each other that, at various points during the incident, § 87(2)(b) had been squirming or fidgeting, with his hands behind his back near his waistband, in a manner consistent with attempting to secrete an object. Sgt. Dym also stated that § 87(2)(b) was wearing multiple pairs of pants, had been involved in crime in the area, and had been in the company of known crime recidivists. PO Jasiurkowski corroborated that § 87(2)(b) had been in the company of crime recidivists, had stated, “yo shoot those motherfuckers,” had attempted to flee, and had resisted arrest. § 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 208-05 states that the desk officer or precinct supervisor is responsible for deciding whether to conduct strip searches. Strip searches should be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon a person or in his or her clothing in such a manner that they may not be discovered by the previous search methods. Other

factors that should be considered in determining the necessity for a strip search include the nature of the crime, arrest circumstances, subject's reputation, acts of violence, and discoveries from previous searches. (Encl. 1a-1b)

§ 87(2)(b), § 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Supervisor: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date